



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/151568

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on October 17, 2013, at Racine, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: DDB by file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner applied for disability based Medicaid benefits on October 30, 2012, alleging that she was disabled by a heart condition that required her to have a pacemaker. (Testimony of Petitioner, DDB file)

3. On November 6, 2012, Petitioner applied for Social Security Disability Income (SSDI) alleging that she was disabled by psychosis and a heart condition that required her to have a pacemaker. (Testimony of Petitioner, DDB file)
4. On April 2, 2013, the Social Security Administration (SSA) denied Petitioner's application for SSDI. (Id.)
5. On April 4, 2013, the Disability Determination Bureau (DDB) sent Petitioner a notice, denying her application for Medicaid. (Id.)
6. Petitioner filed for reconsideration of both the SSA denial and the DDB denial in April 2013. (Testimony of Petitioner; DDB file)
7. On August 20, 2013, the SSA denied Petitioner's application for SSDI. (Id.)
8. On August 22, 2013, the DDB again denied Petitioner's application for Medicaid. (Id.)
9. The DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review on August 23, 2013. (DDB file)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for Medicaid benefits and SSDI based upon the same disabling condition related to her heart. In her application to the SSA the Petitioner alleged a further disability due to psychosis. The SSA denied Petitioner's request for benefits within 12 months of her October 30, 2012 application for Medicaid. Petitioner indicated that since being denied SSDI in August 2013, her condition has not changed significantly, but that she has experienced some improvement since switching medications.

Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

Petitioner should note that Wisconsin Medicaid law will change significantly, effective January 1, 2013. On that date, a person is eligible for Wisconsin Medicaid if his/her income is at or below 100% of the federal poverty level; it will no longer be necessary that a recipient be under 19, elderly, blind, disabled, or a caretaker relative. The January 2014 version of Medicaid may be applied for online from November 18, 2013 onward at Wisconsin's website, <https://access.wisconsin.gov>.

A person may also apply for subsidized private health insurance with coverage beginning effective January 1, 2014 (if you enroll by December 15, 2013). Late enrollments will be allowed until March 31, 2014, but will not be retroactive. Enrollment can be accomplished via the federal website, <https://www.healthcare.gov> or through the federal call center at 1-██████████.

Finally, there is a listing of free, low cost/sliding scale clinics on the Department of Health Services website at: <http://www.dhs.wisconsin.gov/forwardhealth/pdf/fqhc.pdf>

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

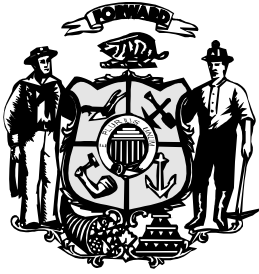
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of October, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 17, 2013.

Racine County Department of Human Services
Disability Determination Bureau